

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 6, 2011

AMENDED IN SENATE JULY 1, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 332**

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**Introduced by Assembly Member Butler**

February 10, 2011

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An act to amend Section 368 of the Penal Code, relating to elder abuse.

### LEGISLATIVE COUNSEL'S DIGEST

AB 332, as amended, Butler. Elder abuse.

Existing law provides that any person who is not a caretaker of an elder or dependent adult, who knows or reasonably should know that the victim is an elder or a dependent adult, or any person who is a caretaker of an elder or dependent adult, and that person violates specified identity theft provisions of law, with respect to the property or personal identifying information of an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in a state prison for 2, 3, or 4 years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.

This bill would make those offenses punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail not exceeding one year, or by both that fine or imprisonment, or alternatively by a fine not exceeding \$10,000, or by imprisonment in a state prison for 2, 3, or 4 years, or by both that fine and imprisonment, if the value of the assets taken is of a value exceeding \$950. The bill would make other technical, nonsubstantive changes.

This bill would incorporate changes to Section 368 of the Penal Code proposed by AB 109, to be operative if both bills are enacted and became operative as specified.

*This bill would additionally incorporate changes to Section 368 of the Penal code proposed by SB 586, to be operative if both bills are enacted and became operative, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 368 of the Penal Code, as amended by  
2 Section 9 of Chapter 28 of the Third Extraordinary Session of the  
3 Statutes of 2009, is amended to read:

4 368. (a) The Legislature finds and declares that crimes against  
5 elders and dependent adults are deserving of special consideration  
6 and protection, not unlike the special protections provided for  
7 minor children, because elders and dependent adults may be  
8 confused, on various medications, mentally or physically impaired,  
9 or incompetent, and therefore less able to protect themselves, to  
10 understand or report criminal conduct, or to testify in court  
11 proceedings on their own behalf.

12 (b) (1) Any person who knows or reasonably should know that  
13 a person is an elder or dependent adult and who, under  
14 circumstances or conditions likely to produce great bodily harm  
15 or death, willfully causes or permits any elder or dependent adult  
16 to suffer, or inflicts thereon unjustifiable physical pain or mental  
17 suffering, or having the care or custody of any elder or dependent  
18 adult, willfully causes or permits the person or health of the elder  
19 or dependent adult to be injured, or willfully causes or permits the  
20 elder or dependent adult to be placed in a situation in which his or  
21 her person or health is endangered, is punishable by imprisonment  
22 in a county jail not exceeding one year, or by a fine not to exceed

1 six thousand dollars (\$6,000), or by both that fine and  
2 imprisonment, or by imprisonment in the state prison for two,  
3 three, or four years.

4 (2) If in the commission of an offense described in paragraph  
5 (1), the victim suffers great bodily injury, as defined in Section  
6 12022.7, the defendant shall receive an additional term in the state  
7 prison as follows:

8 (A) Three years if the victim is under 70 years of age.

9 (B) Five years if the victim is 70 years of age or older.

10 (3) If in the commission of an offense described in paragraph  
11 (1), the defendant proximately causes the death of the victim, the  
12 defendant shall receive an additional term in the state prison as  
13 follows:

14 (A) Five years if the victim is under 70 years of age.

15 (B) Seven years if the victim is 70 years of age or older.

16 (c) Any person who knows or reasonably should know that a  
17 person is an elder or dependent adult and who, under circumstances  
18 or conditions other than those likely to produce great bodily harm  
19 or death, willfully causes or permits any elder or dependent adult  
20 to suffer, or inflicts thereon unjustifiable physical pain or mental  
21 suffering, or having the care or custody of any elder or dependent  
22 adult, willfully causes or permits the person or health of the elder  
23 or dependent adult to be injured or willfully causes or permits the  
24 elder or dependent adult to be placed in a situation in which his or  
25 her person or health may be endangered, is guilty of a  
26 misdemeanor. A second or subsequent violation of this subdivision  
27 is punishable by a fine not to exceed two thousand dollars (\$2,000),  
28 or by imprisonment in a county jail not to exceed one year, or by  
29 both that fine and imprisonment.

30 (d) Any person who is not a caretaker who violates any provision  
31 of law proscribing theft, embezzlement, forgery, or fraud, or who  
32 violates Section 530.5 proscribing identity theft, with respect to  
33 the property or personal identifying information of an elder or a  
34 dependent adult, and who knows or reasonably should know that  
35 the victim is an elder or a dependent adult, is punishable as follows:

36 (1) By a fine not exceeding two thousand five hundred dollars  
37 (\$2,500), or by imprisonment in a county jail not exceeding one  
38 year, or by both that fine and imprisonment, or by a fine not  
39 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
40 the state prison for two, three, or four years, or by both that fine

1 and imprisonment, when the moneys, labor, goods, services, or  
2 real or personal property taken or obtained is of a value exceeding  
3 nine hundred fifty dollars (\$950).

4 (2) By a fine not exceeding one thousand dollars (\$1,000), by  
5 imprisonment in a county jail not exceeding one year, or by both  
6 that fine and imprisonment, when the moneys, labor, goods,  
7 services, or real or personal property taken or obtained is of a value  
8 not exceeding nine hundred fifty dollars (\$950).

9 (e) Any caretaker of an elder or a dependent adult who violates  
10 any provision of law proscribing theft, embezzlement, forgery, or  
11 fraud, or who violates Section 530.5 proscribing identity theft,  
12 with respect to the property or personal identifying information of  
13 that elder or dependent adult, is punishable as follows:

14 (1) By a fine not exceeding two thousand five hundred dollars  
15 (\$2,500), or by imprisonment in a county jail not exceeding one  
16 year, or by both that fine and imprisonment, or by a fine not  
17 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
18 the state prison for two, three, or four years, or by both that fine  
19 and imprisonment, when the moneys, labor, goods, services, or  
20 real or personal property taken or obtained is of a value exceeding  
21 nine hundred fifty dollars (\$950).

22 (2) By a fine not exceeding one thousand dollars (\$1,000), by  
23 imprisonment in a county jail not exceeding one year, or by both  
24 that fine and imprisonment, when the moneys, labor, goods,  
25 services, or real or personal property taken or obtained is of a value  
26 not exceeding nine hundred fifty dollars (\$950).

27 (f) Any person who commits the false imprisonment of an elder  
28 or a dependent adult by the use of violence, menace, fraud, or  
29 deceit is punishable by imprisonment in the state prison for two,  
30 three, or four years.

31 (g) As used in this section, “elder” means any person who is 65  
32 years of age or older.

33 (h) As used in this section, “dependent adult” means any person  
34 who is between the ages of 18 and 64, who has physical or mental  
35 limitations which restrict his or her ability to carry out normal  
36 activities or to protect his or her rights, including, but not limited  
37 to, persons who have physical or developmental disabilities or  
38 whose physical or mental abilities have diminished because of  
39 age. “Dependent adult” includes any person between the ages of  
40 18 and 64 who is admitted as an inpatient to a 24-hour health

1 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the  
2 Health and Safety Code.

3 (i) As used in this section, “caretaker” means any person who  
4 has the care, custody, or control of, or who stands in a position of  
5 trust with, an elder or a dependent adult.

6 (j) Nothing in this section shall preclude prosecution under both  
7 this section and Section 187 or 12022.7 or any other provision of  
8 law. However, a person shall not receive an additional term of  
9 imprisonment under both paragraphs (2) and (3) of subdivision  
10 (b) for any single offense, nor shall a person receive an additional  
11 term of imprisonment under both Section 12022.7 and paragraph  
12 (2) or (3) of subdivision (b) for any single offense.

13 (k) In any case in which a person is convicted of violating these  
14 provisions, the court may require him or her to receive appropriate  
15 counseling as a condition of probation. Any defendant ordered to  
16 be placed in a counseling program shall be responsible for paying  
17 the expense of his or her participation in the counseling program  
18 as determined by the court. The court shall take into consideration  
19 the ability of the defendant to pay, and no defendant shall be denied  
20 probation because of his or her inability to pay.

21 SEC. 1.5. Section 368 of the Penal Code, as amended by  
22 Section 336 of Chapter 15 of the Statutes of 2011, is amended to  
23 read:

24 368. (a) The Legislature finds and declares that crimes against  
25 elders and dependent adults are deserving of special consideration  
26 and protection, not unlike the special protections provided for  
27 minor children, because elders and dependent adults may be  
28 confused, on various medications, mentally or physically impaired,  
29 or incompetent, and therefore less able to protect themselves, to  
30 understand or report criminal conduct, or to testify in court  
31 proceedings on their own behalf.

32 (b) (1) Any person who knows or reasonably should know that  
33 a person is an elder or dependent adult and who, under  
34 circumstances or conditions likely to produce great bodily harm  
35 or death, willfully causes or permits any elder or dependent adult  
36 to suffer, or inflicts thereon unjustifiable physical pain or mental  
37 suffering, or having the care or custody of any elder or dependent  
38 adult, willfully causes or permits the person or health of the elder  
39 or dependent adult to be injured, or willfully causes or permits the  
40 elder or dependent adult to be placed in a situation in which his or

1 her person or health is endangered, is punishable by imprisonment  
2 in a county jail not exceeding one year, or by a fine not to exceed  
3 six thousand dollars (\$6,000), or by both that fine and  
4 imprisonment, or by imprisonment in the state prison for two,  
5 three, or four years.

6 (2) If in the commission of an offense described in paragraph  
7 (1), the victim suffers great bodily injury, as defined in Section  
8 12022.7, the defendant shall receive an additional term in the state  
9 prison as follows:

10 (A) Three years if the victim is under 70 years of age.

11 (B) Five years if the victim is 70 years of age or older.

12 (3) If in the commission of an offense described in paragraph  
13 (1), the defendant proximately causes the death of the victim, the  
14 defendant shall receive an additional term in the state prison as  
15 follows:

16 (A) Five years if the victim is under 70 years of age.

17 (B) Seven years if the victim is 70 years of age or older.

18 (c) Any person who knows or reasonably should know that a  
19 person is an elder or dependent adult and who, under circumstances  
20 or conditions other than those likely to produce great bodily harm  
21 or death, willfully causes or permits any elder or dependent adult  
22 to suffer, or inflicts thereon unjustifiable physical pain or mental  
23 suffering, or having the care or custody of any elder or dependent  
24 adult, willfully causes or permits the person or health of the elder  
25 or dependent adult to be injured or willfully causes or permits the  
26 elder or dependent adult to be placed in a situation in which his or  
27 her person or health may be endangered, is guilty of a  
28 misdemeanor. A second or subsequent violation of this subdivision  
29 is punishable by a fine not to exceed two thousand dollars (\$2,000),  
30 or by imprisonment in a county jail not to exceed one year, or by  
31 both that fine and imprisonment.

32 (d) Any person who is not a caretaker who violates any provision  
33 of law proscribing theft, embezzlement, forgery, or fraud, or who  
34 violates Section 530.5 proscribing identity theft, with respect to  
35 the property or personal identifying information of an elder or a  
36 dependent adult, and who knows or reasonably should know that  
37 the victim is an elder or a dependent adult, is punishable as follows:

38 (1) By a fine not exceeding two thousand five hundred dollars  
39 (\$2,500), or by imprisonment in a county jail not exceeding one  
40 year, or by both that fine and imprisonment, or by a fine not

1 exceeding ten thousand dollars (\$10,000), or by imprisonment  
2 pursuant to subdivision (h) of Section 1170 for two, three, or four  
3 years, or by both that fine and imprisonment, when the moneys,  
4 labor, goods, services, or real or personal property taken or obtained  
5 is of a value exceeding nine hundred fifty dollars (\$950).

6 (2) By a fine not exceeding one thousand dollars (\$1,000), by  
7 imprisonment in a county jail not exceeding one year, or by both  
8 that fine and imprisonment, when the moneys, labor, goods,  
9 services, or real or personal property taken or obtained is of a value  
10 not exceeding nine hundred fifty dollars (\$950).

11 (e) Any caretaker of an elder or a dependent adult who violates  
12 any provision of law proscribing theft, embezzlement, forgery, or  
13 fraud, or who violates Section 530.5 proscribing identity theft,  
14 with respect to the property or personal identifying information of  
15 that elder or dependent adult, is punishable as follows:

16 (1) By a fine not exceeding two thousand five hundred dollars  
17 (\$2,500), or by imprisonment in a county jail not exceeding one  
18 year, or by both that fine and imprisonment, or by a fine not  
19 exceeding ten thousand dollars (\$10,000), or by imprisonment  
20 pursuant to subdivision (h) of Section 1170 for two, three, or four  
21 years, or by both that fine and imprisonment, when the moneys,  
22 labor, goods, services, or real or personal property taken or obtained  
23 is of a value exceeding nine hundred fifty dollars (\$950).

24 (2) By a fine not exceeding one thousand dollars (\$1,000), by  
25 imprisonment in a county jail not exceeding one year, or by both  
26 that fine and imprisonment, when the moneys, labor, goods,  
27 services, or real or personal property taken or obtained is of a value  
28 not exceeding nine hundred fifty dollars (\$950).

29 (f) Any person who commits the false imprisonment of an elder  
30 or a dependent adult by the use of violence, menace, fraud, or  
31 deceit is punishable by imprisonment pursuant to subdivision (h)  
32 of Section 1170 for two, three, or four years.

33 (g) As used in this section, “elder” means any person who is 65  
34 years of age or older.

35 (h) As used in this section, “dependent adult” means any person  
36 who is between the ages of 18 and 64, who has physical or mental  
37 limitations which restrict his or her ability to carry out normal  
38 activities or to protect his or her rights, including, but not limited  
39 to, persons who have physical or developmental disabilities or  
40 whose physical or mental abilities have diminished because of

1 age. “Dependent adult” includes any person between the ages of  
2 18 and 64 who is admitted as an inpatient to a 24-hour health  
3 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the  
4 Health and Safety Code.

5 (i) As used in this section, “caretaker” means any person who  
6 has the care, custody, or control of, or who stands in a position of  
7 trust with, an elder or a dependent adult.

8 (j) Nothing in this section shall preclude prosecution under both  
9 this section and Section 187 or 12022.7 or any other provision of  
10 law. However, a person shall not receive an additional term of  
11 imprisonment under both paragraphs (2) and (3) of subdivision  
12 (b) for any single offense, nor shall a person receive an additional  
13 term of imprisonment under both Section 12022.7 and paragraph  
14 (2) or (3) of subdivision (b) for any single offense.

15 (k) In any case in which a person is convicted of violating these  
16 provisions, the court may require him or her to receive appropriate  
17 counseling as a condition of probation. Any defendant ordered to  
18 be placed in a counseling program shall be responsible for paying  
19 the expense of his or her participation in the counseling program  
20 as determined by the court. The court shall take into consideration  
21 the ability of the defendant to pay, and no defendant shall be denied  
22 probation because of his or her inability to pay.

23 *SEC. 1.7. Section 368 of the Penal Code, as amended by Section*  
24 *9 of Chapter 28 of the Third Extraordinary Session of the Statutes*  
25 *of 2009, is amended to read:*

26 368. (a) The Legislature finds and declares that crimes against  
27 elders and dependent adults are deserving of special consideration  
28 and protection, not unlike the special protections provided for  
29 minor children, because elders and dependent adults may be  
30 confused, on various medications, mentally or physically impaired,  
31 or incompetent, and therefore less able to protect themselves, to  
32 understand or report criminal conduct, or to testify in court  
33 proceedings on their own behalf.

34 (b) (1) Any person who knows or reasonably should know that  
35 a person is an elder or dependent adult and who, under  
36 circumstances or conditions likely to produce great bodily harm  
37 or death, willfully causes or permits any elder or dependent adult  
38 to suffer, or inflicts thereon unjustifiable physical pain or mental  
39 suffering, or having the care or custody of any elder or dependent  
40 adult, willfully causes or permits the person or health of the elder



1 or dependent adult to be injured, or willfully causes or permits the  
2 elder or dependent adult to be placed in a situation in which his or  
3 her person or health is endangered, is punishable by imprisonment  
4 in a county jail not exceeding one year, or by a fine not to exceed  
5 *twelve thousand dollars (\$12,000), of which any amount in excess*  
6 *of six thousand dollars (\$6,000), or (\$6,000) shall be allocated to*  
7 *the adult protective services agency, or equivalent elder abuse*  
8 *prevention agency, of the county prosecuting the offense, or by*  
9 both that fine and imprisonment, or by imprisonment in the state  
10 prison for two, three, or four years.

11 (2) If in the commission of an offense described in paragraph  
12 (1), the victim suffers great bodily injury, as defined in Section  
13 12022.7, the defendant shall receive an additional term in the state  
14 prison as follows:

15 (A) Three years if the victim is under 70 years of age.

16 (B) Five years if the victim is 70 years of age or older.

17 (3) If in the commission of an offense described in paragraph  
18 (1), the defendant proximately causes the death of the victim, the  
19 defendant shall receive an additional term in the state prison as  
20 follows:

21 (A) Five years if the victim is under 70 years of age.

22 (B) Seven years if the victim is 70 years of age or older.

23 (c) Any person who knows or reasonably should know that a  
24 person is an elder or dependent adult and who, under circumstances  
25 or conditions other than those likely to produce great bodily harm  
26 or death, willfully causes or permits any elder or dependent adult  
27 to suffer, or inflicts thereon unjustifiable physical pain or mental  
28 suffering, or having the care or custody of any elder or dependent  
29 adult, willfully causes or permits the person or health of the elder  
30 or dependent adult to be injured or willfully causes or permits the  
31 elder or dependent adult to be placed in a situation in which his or  
32 her person or health may be endangered, is guilty of a  
33 misdemeanor. A second or subsequent violation of this subdivision  
34 is punishable by a fine not to exceed *four thousand dollars*  
35 *(\$4,000), of which any amount in excess of two thousand dollars*  
36 *(\$2,000) shall be allocated to the adult protective services agency,*  
37 *or equivalent elder abuse prevention agency, of the county*  
38 *prosecuting the offense, or by imprisonment in a county jail not*  
39 to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable ~~by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).~~ as follows:

(1) *By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment or, by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).*

(2) *By a fine not exceeding two thousand dollars (\$2,000), of which any amount in excess of one thousand dollars (\$1,000) shall be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).*

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

(1) *By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment*

1 *pursuant in the state prison for two, three, or four years, or by*  
2 *both that fine and imprisonment, when the moneys, labor, goods,*  
3 *services, or real or personal property taken or obtained is of a*  
4 *value exceeding nine hundred fifty dollars (\$950).*

5 ~~(e) Any caretaker of an elder or a dependent adult who violates~~  
6 ~~any provision of law proscribing theft, embezzlement, forgery, or~~  
7 ~~fraud, or who violates Section 530.5 proscribing identity theft,~~  
8 ~~with respect to the property or personal identifying information of~~  
9 ~~that elder or dependent adult, is punishable by imprisonment in a~~  
10 ~~county jail not exceeding one year, or in the state prison for two,~~  
11 ~~three, or four years when the moneys, labor, goods, services, or~~  
12 ~~real or personal property taken or obtained is of a value exceeding~~  
13 ~~nine hundred fifty dollars (\$950), and by a~~

14 *(2) By a fine not exceeding two thousand dollars (\$2,000), of*  
15 *which any amount in excess of one thousand dollars (\$1,000);*  
16 *(\$1,000) shall be allocated to the adult protective services agency,*  
17 *or equivalent elder abuse prevention agency, of the county*  
18 *prosecuting the offense, by imprisonment in a county jail not*  
19 *exceeding one year, or by both that fine and imprisonment, when*  
20 *the moneys, labor, goods, services, or real or personal property*  
21 *taken or obtained is of a value not exceeding nine hundred fifty*  
22 *dollars (\$950).*

23 (f) Any person who commits the false imprisonment of an elder  
24 or a dependent adult by the use of violence, menace, fraud, or  
25 deceit is punishable by imprisonment in the state prison for two,  
26 three, or four years.

27 (g) As used in this section, “elder” means any person who is 65  
28 years of age or older.

29 (h) As used in this section, “dependent adult” means any person  
30 who is ~~between the ages of 18 and 64~~, *64 years of age*, who has  
31 physical or mental limitations which restrict his or her ability to  
32 carry out normal activities or to protect his or her rights, including,  
33 but not limited to, persons who have physical or developmental  
34 disabilities or whose physical or mental abilities have diminished  
35 because of age. “Dependent adult” includes any person between  
36 ~~the ages of 18 and 64 years of age~~ who is admitted as an inpatient  
37 to a 24-hour health facility, as defined in Sections 1250, 1250.2,  
38 and 1250.3 of the Health and Safety Code.

1 (i) As used in this section, “caretaker” means any person who  
2 has the care, custody, or control of, or who stands in a position of  
3 trust with, an elder or a dependent adult.

4 (j) Nothing in this section shall preclude prosecution under both  
5 this section and Section 187 or 12022.7 or any other provision of  
6 law. However, a person shall not receive an additional term of  
7 imprisonment under both paragraphs (2) and (3) of subdivision  
8 (b) for any single offense, nor shall a person receive an additional  
9 term of imprisonment under both Section 12022.7 and paragraph  
10 (2) or (3) of subdivision (b) for any single offense.

11 (k) In any case in which a person is convicted of violating these  
12 provisions, the court may require him or her to receive appropriate  
13 counseling as a condition of probation. Any defendant ordered to  
14 be placed in a counseling program shall be responsible for paying  
15 the expense of his or her participation in the counseling program  
16 as determined by the court. The court shall take into consideration  
17 the ability of the defendant to pay, and no defendant shall be denied  
18 probation because of his or her inability to pay.

19 *SEC. 1.9. Section 368 of the Penal Code, as amended by Section*  
20 *336 of Chapter 15 of the Statutes of 2011, is amended to read:*

21 368. (a) The Legislature finds and declares that crimes against  
22 elders and dependent adults are deserving of special consideration  
23 and protection, not unlike the special protections provided for  
24 minor children, because elders and dependent adults may be  
25 confused, on various medications, mentally or physically impaired,  
26 or incompetent, and therefore less able to protect themselves, to  
27 understand or report criminal conduct, or to testify in court  
28 proceedings on their own behalf.

29 (b) (1) Any person who knows or reasonably should know that  
30 a person is an elder or dependent adult and who, under  
31 circumstances or conditions likely to produce great bodily harm  
32 or death, willfully causes or permits any elder or dependent adult  
33 to suffer, or inflicts thereon unjustifiable physical pain or mental  
34 suffering, or having the care or custody of any elder or dependent  
35 adult, willfully causes or permits the person or health of the elder  
36 or dependent adult to be injured, or willfully causes or permits the  
37 elder or dependent adult to be placed in a situation in which his or  
38 her person or health is endangered, is punishable by imprisonment  
39 in a county jail not exceeding one year, or by a fine not to exceed  
40 *twelve thousand dollars (\$12,000), of which any amount in excess*

1 of six thousand dollars ~~(\$6,000), or (\$6,000)~~ shall be allocated to  
2 the adult protective services agency, or equivalent elder abuse  
3 prevention agency, of the county prosecuting the offense, or by  
4 both that fine and imprisonment, or by imprisonment in the state  
5 prison for two, three, or four years.

6 (2) If in the commission of an offense described in paragraph  
7 (1), the victim suffers great bodily injury, as defined in Section  
8 12022.7, the defendant shall receive an additional term in the state  
9 prison as follows:

10 (A) Three years if the victim is under 70 years of age.

11 (B) Five years if the victim is 70 years of age or older.

12 (3) If in the commission of an offense described in paragraph  
13 (1), the defendant proximately causes the death of the victim, the  
14 defendant shall receive an additional term in the state prison as  
15 follows:

16 (A) Five years if the victim is under 70 years of age.

17 (B) Seven years if the victim is 70 years of age or older.

18 (c) Any person who knows or reasonably should know that a  
19 person is an elder or dependent adult and who, under circumstances  
20 or conditions other than those likely to produce great bodily harm  
21 or death, willfully causes or permits any elder or dependent adult  
22 to suffer, or inflicts thereon unjustifiable physical pain or mental  
23 suffering, or having the care or custody of any elder or dependent  
24 adult, willfully causes or permits the person or health of the elder  
25 or dependent adult to be injured or willfully causes or permits the  
26 elder or dependent adult to be placed in a situation in which his or  
27 her person or health may be endangered, is guilty of a  
28 misdemeanor. A second or subsequent violation of this subdivision  
29 is punishable by a fine not to exceed *four thousand dollars*  
30 *(\$4,000), of which any amount in excess of two thousand dollars*  
31 ~~(\$2,000), or (\$2,000)~~ shall be allocated to the adult protective  
32 services agency, or equivalent elder abuse prevention agency, of  
33 the county prosecuting the offense, or by imprisonment in a county  
34 jail not to exceed one year, or by both that fine and imprisonment.

35 (d) Any person who is not a caretaker who violates any provision  
36 of law proscribing theft, embezzlement, forgery, or fraud, or who  
37 violates Section 530.5 proscribing identity theft, with respect to  
38 the property or personal identifying information of an elder or a  
39 dependent adult, and who knows or reasonably should know that  
40 the victim is an elder or a dependent adult, is punishable by

1 imprisonment in a county jail not exceeding one year, or pursuant  
2 to subdivision (h) of Section 1170 for two, three, or four years,  
3 when the moneys, labor, goods, services, or real or personal  
4 property taken or obtained is of a value exceeding nine hundred  
5 fifty dollars (\$950); and by a fine not exceeding one thousand  
6 dollars (\$1,000), by imprisonment in a county jail not exceeding  
7 one year, or by both that fine and imprisonment, when the moneys,  
8 labor, goods, services, or real or personal property taken or obtained  
9 is of a value not exceeding nine hundred fifty dollars (\$950). as  
10 follows:

11 (1) By a fine not exceeding two thousand five hundred dollars  
12 (\$2,500), or by imprisonment in a county jail not exceeding one  
13 year, or by both that fine and imprisonment, or by a fine not  
14 exceeding ten thousand dollars (\$10,000), or by imprisonment  
15 pursuant to subdivision (h) of Section 1170 for two, three, or four  
16 years, or by both that fine and imprisonment, when the moneys,  
17 labor, goods, services, or real or personal property taken or  
18 obtained is of a value exceeding nine hundred fifty dollars (\$950).

19 (2) By a fine not exceeding two thousand dollars (\$2,000), of  
20 which any amount in excess of one thousand dollars (\$1,000) shall  
21 be allocated to the adult protective services agency, or equivalent  
22 agency, of the county prosecuting the offense, by imprisonment in  
23 a county jail not exceeding one year, or by both that fine and  
24 imprisonment, when the moneys, labor, goods, services, or real  
25 or personal property taken or obtained is of a value not exceeding  
26 nine hundred fifty dollars (\$950).

27 (e) Any caretaker of an elder or a dependent adult who violates  
28 any provision of law proscribing theft, embezzlement, forgery, or  
29 fraud, or who violates Section 530.5 proscribing identity theft,  
30 with respect to the property or personal identifying information  
31 of that elder or dependent adult, is punishable as follows:

32 (1) By a fine not exceeding two thousand five hundred dollars  
33 (\$2,500), or by imprisonment in a county jail not exceeding one  
34 year, or by both that fine and imprisonment, or by a fine not  
35 exceeding ten thousand dollars (\$10,000), or by imprisonment  
36 pursuant to subdivision (h) of Section 1170 for two, three, or four  
37 years, or by both that fine and imprisonment, when the moneys,  
38 labor, goods, services, or real or personal property taken or  
39 obtained is of a value exceeding nine hundred fifty dollars (\$950).

1 ~~(e) Any caretaker of an elder or a dependent adult who violates~~  
2 ~~any provision of law proscribing theft, embezzlement, forgery, or~~  
3 ~~fraud, or who violates Section 530.5 proscribing identity theft,~~  
4 ~~with respect to the property or personal identifying information of~~  
5 ~~that elder or dependent adult, is punishable by imprisonment in a~~  
6 ~~county jail not exceeding one year, or pursuant to subdivision (h)~~  
7 ~~of Section 1170 for two, three, or four years when the moneys,~~  
8 ~~labor, goods, services, or real or personal property taken or obtained~~  
9 ~~is of a value exceeding nine hundred fifty dollars (\$950), and by~~  
10 ~~a~~

11 *(2) By a fine not exceeding two thousand dollars (\$2,000), of*  
12 *which any amount in excess of one thousand dollars (\$1,000),*  
13 *(\$1,000) shall be allocated to the adult protective services agency,*  
14 *or equivalent elder abuse prevention agency, of the county*  
15 *prosecuting the offense, by imprisonment in a county jail not*  
16 *exceeding one year, or by both that fine and imprisonment, when*  
17 *the moneys, labor, goods, services, or real or personal property*  
18 *taken or obtained is of a value not exceeding nine hundred fifty*  
19 *dollars (\$950).*

20 (f) Any person who commits the false imprisonment of an elder  
21 or a dependent adult by the use of violence, menace, fraud, or  
22 deceit is punishable by imprisonment pursuant to subdivision (h)  
23 of Section 1170 for two, three, or four years.

24 (g) As used in this section, “elder” means any person who is 65  
25 years of age or older.

26 (h) As used in this section, “dependent adult” means any person  
27 who is ~~between the ages of 18 and 64,~~ *64 years of age*, who has  
28 physical or mental limitations which restrict his or her ability to  
29 carry out normal activities or to protect his or her rights, including,  
30 but not limited to, persons who have physical or developmental  
31 disabilities or whose physical or mental abilities have diminished  
32 because of age. “Dependent adult” includes any person between  
33 ~~the ages of 18 and 64 years of age~~ who is admitted as an inpatient  
34 to a 24-hour health facility, as defined in Sections 1250, 1250.2,  
35 and 1250.3 of the Health and Safety Code.

36 (i) As used in this section, “caretaker” means any person who  
37 has the care, custody, or control of, or who stands in a position of  
38 trust with, an elder or a dependent adult.

39 (j) Nothing in this section shall preclude prosecution under both  
40 this section and Section 187 or 12022.7 or any other provision of

1 law. However, a person shall not receive an additional term of  
2 imprisonment under both paragraphs (2) and (3) of subdivision  
3 (b) for any single offense, nor shall a person receive an additional  
4 term of imprisonment under both Section 12022.7 and paragraph  
5 (2) or (3) of subdivision (b) for any single offense.

6 (k) In any case in which a person is convicted of violating these  
7 provisions, the court may require him or her to receive appropriate  
8 counseling as a condition of probation. Any defendant ordered to  
9 be placed in a counseling program shall be responsible for paying  
10 the expense of his or her participation in the counseling program  
11 as determined by the court. The court shall take into consideration  
12 the ability of the defendant to pay, and no defendant shall be denied  
13 probation because of his or her inability to pay.

14 SEC. 2. (a) Section 1.5 of this bill incorporates amendments  
15 to Section 368 of the Penal Code proposed by both this bill and  
16 ~~AB~~ Assembly Bill 109. It shall only become operative if (1) both  
17 bills are enacted and become effective on or before January 1,  
18 2012, (2) each bill amends Section 368 of the Penal Code, and (3)  
19 this bill is enacted after ~~AB~~ Assembly Bill 109, in which case  
20 Section 1 of this bill shall not become operative.

21 (b) Section 1.7 of this bill incorporates amendments to Section  
22 368 of the Penal Code, as amended by Section 9 of Chapter 28 of  
23 the Third Extraordinary Session of the Statutes of 2009, proposed  
24 by both this bill and Senate Bill 586. Section 1.7 shall only become  
25 operative if (1) both bills are enacted and become effective on or  
26 before January 1, 2012, (2) each bill amends Section 368 of the  
27 Penal Code as amended by Section 9 of Chapter 28 of the Third  
28 Extraordinary Session of the Statutes of 2009, (3) Assembly Bill  
29 109 does not become operative and (4) this bill is enacted after  
30 Senate Bill 586, in which case Sections 1, 1.5, and 1.9 of this bill  
31 shall not become operative.

32 (c) Section 1.9 of this bill incorporates amendments to Section  
33 368 of the Penal Code proposed by this bill, Assembly Bill 109,  
34 which has been chaptered but is not operative, and Senate Bill  
35 586. It shall only become operative if (1) all three bills are enacted  
36 and become operative on or before January 1, 2012, (2) this bill  
37 and Senate Bill 586 amend Section 368 of the Penal Code, and (3)



1 *this bill is enacted after Senate Bill 586, in which case Sections 1,*  
2 *1.5, and 1.7 of this bill shall not become operative.*

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